INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 300

INDEPENDENT COAL & COKE COMPANY AND CARBON COUNTY LAND COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA AND CARBON COUNTY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 31) is reported in 9 F. (2d) 517. It reversed the decree of the District Court for the District of Utah dismissing the complaint (R. 24), not reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 21, 1925. (R. 35.) Certiorari was allowed by this Court March 22, 1926, under Section 240(a) of the Judicial Code, as amended by

the Act of February 13, 1925, c. 229, 43 Stat. 936, 938.

STATEMENT

This case arose in the United States District Court for the District of Utah, in which, on May 16, 1924, the United States filed its bill (R. 1) seeking a decree that the Carbon County Land Company and the Independent Coal and Coke Company are trustees for the United States in respect of certain coal lands in Carbon County, Utah, which had been patented to the Carbon County Land Company by the State of Utah on February 10, 1920. The Independent Coal & Coke Company claims an interest in a portion of the land through the Carbon County Land Company.

The case was disposed of in the District Court on motions of the defendants to dismiss the bill of complaint, which were granted (R. 19-24), and the facts open to consideration are those to be derived from allegations in the bill of complaint and disclosed in the exhibits to the bill.

By Sections 8 and 12 of the Act of Congress approved July 16, 1894, c. 138, 28 Stat. 107, 109, 110, there were granted to the State of Utah many thousands of acres of land for the purpose of erecting an agricultural college, a school of mines, and a deaf and dumb asylum. There was no grant in place, and all lands were to be selected by the State from unappropriated public lands in such manner as the legislature should provide, with the approval of the Secretary of the Interior. The legislature of the

State created a board of land commissioners to deal with the subject, with power to select the lands and procure a transfer from the United States.

The lands involved in this case were, during 1901–1904, certified to the State of Utah under this Act. (*R.* 1.)

Between December 10, 1900, and September 14, 1903, Stanley B. Milner, Truth A. Milner, his wife, Harley O. Milner, acting through Stanley B. Milner as agent, and Samuel H. Gilson, the predecessors in interest of the Carbon County Land Company, made application to the board of land commissioners of the State to purchase the lands here involved, and requested that the State select the lands and procure a patent to the State to be issued by the authorized officers of the United States, and that upon such selection and patent the applicants would purchase the land at a price of $1.50 per acre, payable in installments in ten years. (R. 7–8.) The grant from the United States did not contemplate the selection of mineral lands.

The Milners, at the time of their application, submitted affidavits (R. 8–9) that they had knowledge of the character of the lands and that they were non-mineral and did not contain any deposit of coal, and the president and secretary of the State board of land commissioners signed and submitted to the Land Office of the United States affidavits (R. 9–10) that—

> we have caused the lands mentioned to be carefully examined by agents and employees

> of the state as to their mineral or agricultural character,

and stating that there were not within the limits of the land any deposits of coal. The lands were certified on the faith of these representations.

The agreements by the Milners to purchase the land from the State were assigned to the Carbon County Land Company, having a total capital of 100,000 shares, of which Stanley B. Milner owned 99,950. (R. 18.)

In January, 1907 (R. 2, 32), the United States brought suit in the United States District Court for the District of Utah against the individual purchasers from the State and the Carbon County Land Company. While the bill of complaint in this case states (R. 2) that this suit was "for the cancellation of said contracts of sale upon the ground that the said lands were mineral lands, and were known to be such at the time of their selection by the State," the record in the first suit shows that it was an action to quiet title of the United States (R. 6), and the decree which was entered was not a decree cancelling the contracts to purchase between the Milners and the State, but a decree adjudging that the United States was the owner and entitled to possession and quieting its title against any and all claims of the defendants and enjoining the defendants perpetually from setting up or making any claim to the lands (R. 2-4). The theory of the bill in the original suit was that the lands were coal in character, known to be such at the time of selection

and certification, and not properly certified on that account, and that the certification had been procured by fraudulent representations of the defendants. The State of Utah was not made a party.

The United States succeeded in that suit, and on June 8, 1914, a decree was entered (R. 2) adjudging, in the present tense, that the United States "is the owner and entitled to the possession" of the lands in question; that its title be quieted against the claims of the defendants or any person claiming under them, and that the defendants "have no right, title or interest, or right of possession." This decree was affirmed November 15, 1915, by the Circuit Court of Appeals. *Milner* v. *United States*, 228 Fed. 431. Appeal dismissed, 248 U. S. 594.

The decree in the former case and the opinion of the Circuit Court of Appeals were set forth in or attached as exhibits to the bill of complaint in this case (R. 2, 6). The decree did not purport to settle the title as of the date of the commencement of the suit, but as of the date of the decree, and it was not limited by its terms to quieting the plaintiff's title merely as against the contracts issued by the State. The certifications made by the Secretary of the Interior on selections by the officers of the State land board were made at different dates from June 22, 1901, to December 1, 1904. Only one certification, that relating to the Gilson purchase, was made as late as December 1, 1904. The one last preceding it was made May 8, 1904 (R. 12), more than ten

years before the date of the decree in the former suit, which was June 8, 1914. At the time the decree was entered in the former suit, no patents from the State of Utah to the purchasers had been issued, but "payments as required by the contracts of purchase" had been made as therein provided. (R. 12.)

Notwithstanding the decree in the former suit, the State of Utah did not conform its subsequent action thereto by selecting other lands, but, quoting the language of the bill (R. 4):

> On the contrary, on February 10, 1920, the State issued its patent to said lands to the Carbon County Land Company, a corporation, the same party to which said contracts of sale had been assigned; in so doing the State relied upon the fact that it had not parted with the legal title to the lands at the time the decree was entered in the before-mentioned suit.

If the statute of limitations against suits to cancel patents applies to certifications under the statute here involved, then the statute would have run in favor of the State between the date of the institution of the original suit in 1907 against the Carbon County Land Company and the date of the decree therein in 1914.

There is nothing in the record herein to indicate that the patent from the State to the Carbon County Land Company in February, 1920, was or was not pursuant to the original contracts to purchase.

In the brief filed by the State of Utah *amicus curiae* in support of the petition for certiorari, it is disclosed that the State is quite willing to reap the benefit of the fraud perpetrated and adjudged against the Carbon County Land Company, because it is therein stated, although it is not part of the record, that the conveyance of 1920 from the State to the Carbon County Land Company was pursuant to a new contract by which the land company agreed to buy the land for a substantial sum, the first installment to be paid in 1930, and the next in 1940, and the last in 1950.

Each of the defendants filed a motion to dismiss, resting mainly on the proposition that the State was barred under Section 8 of the Act of March 3, 1891, c. 561, 26 Stat. 1095, 1099, because more than six years had elapsed since the cause of action arose (apparently having reference to the dates of the certifications to the State of Utah, R. 19, 20, 22). The District Court sustained the motions, holding that "certification by the Secretary of the Interior of the lands in question to the State of Utah was in legal effect a patent and in my opinion comes within the meaning of the word patent as used in Section 8 of the act of March 3, 1891." (R. 24.) The Circuit Court of Appeals reversed that decree, except as to Carbon County, which had a small claim for taxes, and remanded the case with instructions to permit the other defendants to answer. (R. 35.)

SUMMARY OF ARGUMENT

The statute of limitations is not a bar to the relief now sought. The action is not to set aside or cancel a certification, but is in aid of a former decree which declared the equitable title of the petitioner Carbon County Land Company fraudulent and void and vested title in the United States. The effect of the former decree was to make the petitioner incompetent to hold against the United States any title based upon the original fraud, and when the State conveyed the legal title to the Carbon County Land Company that company and its assignee held it impressed with the trust in favor of the United States. To have that trust declared by decree is the purpose of the suit.

The statute of limitations applicable to patents does not apply to certifications.

ARGUMENT

I

THE STATUTE OF LIMITATIONS IS NOT A BAR TO ANY RELIEF SOUGHT IN THIS CASE

The object of this action is not to set aside a patent or a certification of public lands, but by invoking fundamental principles of equity to secure the practical benefit of a decree which the United States obtained 12 years ago against the Carbon County Land Company, then adjudged guilty of being a party to a fraudulent scheme to divest the title of the United States to a valuable portion of

the public domain, and now one of the petitioners herein. The fraud was in making false statements and procuring false affidavits and inducing the State of Utah to use them to obtain from the Interior Department coal lands which that Department had no authority to certify, upon the representation that they were agricultural lands which the Department did have authority to certify. The case was similar to *Charleston, South Carolina, Mining & Mfg. Co.* v. *United States* (February 21, 1927).

The good faith of the State was not then questioned. Its selection of the lands was made for the purpose of selling them to the conspirators who had previously made application to the State to purchase them. (R. 12, 13; *Milner* v. *The United States*, 228 Fed. 431, 435, 436.) "The plan made use of the State as a mere conduit through which the lands were to be fraudulently acquired." (R. 33.) The agreements to purchase were assigned to the Carbon County Land Company, of the stock of which Milner, one of the conspirators, owned 99,950, out of a total of 100,000 shares. (R. 18.) The Circuit Court of Appeals said (R. 18):

> We find that the whole transaction was a scheme or conspiracy on the part of Milner to fraudulently obtain the ownership of these lands from the United States.

The scheme succeeded so far that the lands were certified and payments to the State, as required by the contract of purchase, had been made. (R. 12.)

The United States brought its suit against the conspirators and their assignee, the petitioner *Carbon County Land Company*, and on June 8, 1914, obtained a decree which—

(1) Adjudged that the United States was the owner and entitled to the possession of the land;

(2) Quieted its title against any and all claims of the defendants or of those claiming through or under them;

(3) Adjudged that the defendants had no right, title, interest, or right of possession in or to the lands;

(4) Perpetually enjoined the defendants from setting up or making any claims to or upon the lands and quieted all their claims.

Notwithstanding this decree we now find that company claiming ownership of these same lands under a patent from the State of Utah dated February 10, 1920, issued, as alleged in the bill and admitted by the motion to dismiss, in reliance upon the fact that that State "had not parted with the legal title to the lands" at the time the decree was entered. (R. 4.) The bill avers "that at all times the title to said lands has been equitably in the United States," and asks that the defendants be adjudged and decreed "to hold whatever title they have to the said lands in trust for the plaintiff (United States), and to convey the same to the plaintiff, and deliver to the plaintiff any patent or deeds of the said lands in their possession," subject to the mortgage taken by the State to secure the

payment of the purchase price. (R. 5.) It is *res adjudicata* against the petitioners that on June 8, 1914, the United States was the true owner and entitled to the possession of these lands, and that petitioners' inchoate or equitable title under its contract of purchase from the State of Utah was void for fraud in procuring a record title in the State, its vendor. That record title having now been conveyed by the State to the same parties, equity and good conscience require that it, too, should be surrendered so that complete beneficial enjoyment of the fruits of that decree may vest in the United States.

To enforce that right the present suit was begun. The Circuit Court of Appeals held very properly that the suit was in aid of the former decree and to obtain the benefits of that decree; that as to the Carbon County Land Company the bill was a supplemental bill, or, more properly, an original bill in the nature of a supplemental bill and is proper where new interests arise or where relief of a different kind from that obtainable under the first suit is required. *Root* v. *Woolworth*, 150 U. S. 401; *Shields* v. *Thomas*, 18 How. 253, 262; *Thompson* v. *Maxwell*, 95 U. S. 391, 399; *Story's Equity Pleadings*, 10th ed., Secs. 338, 339, 345, 351(b), 355, 429, 432. *Cooper* on *Equity Pleading*, pp. 74, 75.

As to the merits, the court held that if the case stated in the bill should be made out it would seem clear that the relief sought should be granted as to the Carbon County Land Company and the Inde-

pendent Coal & Coke Company. *Meader* v. *Norton*, 11 Wall. 442, 458; *Moore* v. *Crawford*, 130 U. S. 122; *Jones* v. *Van Doren*, 130 U. S. 684, 691; *Monroe Cattle Company* v. *Becker*, 147 U. S. 47, 57.

The case does not, therefore, seek to set aside a patent after the running of the statute of limitations, but to make perfect rights secured by judgment in an action brought before the statute had run.

Although the bill of complaint in this case says that the original suit was brought to cancel the contracts of purchase between the predecessors of the Carbon County Land Company and the State, the record elsewhere disclosed conclusively, we think, that such was not and could not have been the purpose of the suit, and that no decree to that effect was ever entered. The Circuit Court of Appeals said that the action was to quiet title (R. 6), and the decree which was actually entered was not one cancelling the contracts of purchase, but one adjudging the United States to be the owner of the lands, and holding that the defendants had no interest in them. The United States had no interest in cancelling the contracts as between the purchasers and the State of Utah.

If, as indicated by the record, before the decree was entered in the former suit all of the deferred installments of the purchase price under the contract (except with respect to the one tract covered by the Gilson purchase, as to which the final installment did not mature until December, 1914)

had been paid by the purchasers to the State, the State at the time that decree was entered held only the naked legal title.

When, pursuant to a contract for the sale of real estate, the contract price has been fully paid, the entire title is equitably vested in the purchaser and he may compel a conveyance of the legal title by the vendor, his heirs, or his assigns. *Jennisons* v. *Leonard*, 21 Wall. 302, 309. This is one of the most familiar grounds for specific performance. See *Bispham's Principles of Equity*, 10th Ed., Section 364. Whatever interest, therefore, the State had then obtained under the original certifications or through the operation of the statute of limitations belonged in equity to the purchasers.

The United States had the right, if it chose, to pursue the equitable owner under the contract and obtain the decree against it. Although the original decree did not in terms transfer to the United States from the Carbon County Land Company all of the interest acquired by that company under the contracts, such was the legal effect for it adjudged that the United States was the lawful owner of the lands and its title was adjudged and decreed to be quieted against all claims, demands, or pretenses whatsoever of the defendants. (R. 4.) Subsequent to that decree the Carbon County Land Company could not, as against the United States, enter into an arrangement with the State canceling the contracts or surrender to the State the interest previously held under the contract.

While the contracts of purchase contained a clause that the obligation of the State should be released if the lands should be determined to be mineral in character, that had no reference to a case of fraud by the purchaser. As a result of the decree in the suit by the United States against the Carbon County Land Company the latter had no right to a refund of the purchase money from the State, because the decree determining that fraud had been perpetrated was not binding on the State, and the Carbon County Land Company could not in a suit against the State to recover the purchase price paid have set up its own fraud as a ground for recovery. We think, therefore, the case should be dealt with as if, at the time of the entry in the present tense of the decree of June, 1914, the Carbon County Land Company, as between it and the State of Utah, was the equitable owner of the lands, or at least all but a small part of them, and that whatever fortification of the State's title had meanwhile occurred through the running of the statute of limitations inured to the benefit of the Carbon County Land Company, and that the effect of the decree then entered was to take from the Carbon County Land Company and revest in the United States any and all interest which that Company had acquired by contract or through the running of the statute of limitations.

If that Company, before that decree was entered, had come into court with a deed from the State granted after the statute had run, and on

that ground had demanded a dismissal of the bill, can there be any doubt what the chancellor would have done? Would he not then have decreed that the entire title, legal as well as equitable, be surrendered up to the United States? What equity would have done then it will do now in aid of and to carry to its logical conclusion the decree then made.

II

IT IS IMMATERIAL THAT THE LEGAL TITLE MAY HAVE PASSED TO THE STATE BY THE CERTIFICATIONS OR WAS UNAFFECTED BY THE DECREE IN THE FORMER SUIT

It is argued on behalf of the petitioners that the legal title to the lands passed to the State of Utah by the certifications made, and was unaffected by the decree in the former suit. That proposition need not be considered.

We are not now concerned with any adjustment of rights between the United States and the State of Utah. It may be that after the statute of limitations had run against a suit to cancel the certification to the State, the State could have given a valid conveyance to an innocent purchaser. It may be that, after the statute had run, the State could have given a valid conveyance to the Carbon County Land Company but for the decree of June 8, 1914. That, however, would not have prevented the United States from suing it for damages for fraud. *United States* v. *Whited & Wheless*, 246 U. S. 552. Instead of doing that, however, the United States, *be-*

fore the statute had run, brought its suit in equity against the wrongdoer, and in that suit procured a judgment establishing its own rightful title to the land. The effect of that decree was to brand forever the perpetrator of the fraud as incapable of becoming a bona fide purchaser or of holding against the United States the fruits of its fraud. See cases cited, *infra*, pp. 21, 22.

The former suit was based upon the case of *Williams* v. *United States*, 138 U. S. 514. In that case there had been a certification to the State of Nevada and the latter had entered into a contract for the sale of the lands certified but had not conveyed the legal title. Suit was brought against the State's transferee alone and it was contended that the action could not be maintained because the state was a necessary party; and, overruling that contention, this Court held that the certification operated to transfer the legal title to the State, while the contract between the State and its transferee passed to him the equitable title, the legal title being retained by the State simply as security for the unpaid part of the purchase price. This Court said (p. 516):

> The State of Nevada might have intervened. It did not; doubtless, because it felt it had no real interest. It was no intentional party to any wrong upon the general government. If its agency had been used by the wrong-doer to obtain title from the general government; if, conscious of no wrong on its part, it had obtained from the general government the legal title and conveyed it away

> to the alleged wrong-doer, it might justly say that it had no interest in the controversy, and that it would leave to the determination of the courts the question of right between the government and the alleged wrong-doer, and conform its subsequent action to that determination. That certainly is the dignified and proper course to be pursued by a State, which is charged to have been the innocent instrumentality and agent by which a title to real estate has been wrongfully obtained from the general government.

It is obvious that the Government relied upon the principles thus announced. Indeed, it is so alleged in the bill. (R. 4.) It seems, however, that its confidence was not justified, for thereafter the State issued its patent to the party which had made use of it as a conduit through which lands had been fraudulently acquired. Having divested the wrongdoer of its equitable title, and having thereafter discovered that the wrongdoer had again succeeded in obtaining from the same source another muniment of title, in accordance with well recognized principles of equity it brought another suit to impress a trust with respect to the new matter. This Court said in *Moore* v. *Crawford*, 130 U. S. 122, 128:

> Whenever the legal title to property is obtained through means or under circumstances "which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property

> thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never, perhaps, have had any legal estate therein; and a court of equity has jurisdiction to reach the property either in the hands of the original wrongdoer, or in the hands of any subsequent holder, until a purchaser of it in good faith and without notice acquires a higher right and takes the property relieved from the trust." Pomeroy Eq. Jur. § 1053.

The moment the legal title vested in the petitioners it became impressed with a trust for the benefit of the United States.

III

THE STATE OBTAINED NO NEW TITLE BY THE RUNNING OF THE STATUTE OF LIMITATIONS

It is argued that by virtue of the statute of limitations the legal title of the State had ripened into an impregnable title on February 10, 1920, when the State patented the lands to the Carbon County Land Company. Of course the State obtained no *new* title by reason of the running of the statute of limitations. The only title which the State had was that conferred by the certification, and that had been adjudged fraudulent, and, so far as petitioners are concerned, forever remained fraudulent. The statute of limitations is to prevent fraud, not to furnish the means by which to make it successful and sure. *Exploration Company* v. *United States*, 247 U. S. 435. The only thing that the statute con-

ferred was immunity from suit. It merely deprived the United States of a remedy.

The United States was, by the decree of 1914, the owner of the equitable title; that is, the beneficial title. The State had long before conveyed that equitable title to the Carbon County Land Company. Indeed, it obtained certification to the lands solely for the purpose of conveying them to that Company. When, therefore, the rights of that company were transferred to the United States, the United States became entitled in equity to a further conveyance of whatever was necessary to perfect and make complete its beneficial use and enjoyment of the property. When the State, unmindful of its duty in the premises, made further conveyance to that company, equity regards that company as holding it for the benefit of the one holding the equitable title. As the conveyance by the State was nothing but an additional step in aid of the original fraud and intended to deprive the United States of the benefits of its decree, so the present suit was but an additional move by the United States, when the conspirators again bestirred themselves, to protect the rights which it had secured under the first decree against the new threat.

This Court said in *United States* v. *Minor*, 114 U. S. 233, 241:

> When, therefore, he succeeds by misrepresentation, by fraudulent practices, aided by perjury, there would seem to be more

> reason why the United States, as the owner of land of which it has been defrauded by these means, should have remedy against that fraud—all the remedy which the courts can give—than in the case of a private owner of a few acres of land on whom a like fraud has been practiced.

The United States is entitled in this case to "all the remedy which the courts can give."

IV

THE PETITIONERS ARE BARRED BY THE FACTS ESTABLISHED IN THE FIRST DECREE FROM HOLDING TITLE TO THESE LANDS AS AGAINST THE UNITED STATES

It is argued that the Carbon County Land Company was not by virtue of the decree in the first suit debarred from receiving a patent to these lands, nor from availing itself of the title thereby obtained, since the transactions through which it obtained title were not a continuation of but entirely distinct from the transactions which were the subject of litigation in the first suit. This brings us to the controlling point in the case.

We claim that the Carbon County Land Company was by virtue of the decree in the first suit debarred from receiving or holding legal title to these lands, and we deny that upon the record, the patent from the State in 1920 was entirely distinct from the transactions which were the subject of the first suit. There was no new title in the State not based upon the original fraud. The bill alleges

(R. 4) that the State issued its patent to the same party to which the original contracts of sale had been assigned, and in so doing relied upon the fact "that it had not parted with the legal title to the lands at the time the decree was entered in the before-mentioned suit." While not as definite as it might have been, this allegation plainly means that the title was the same fraudulent title based upon nothing new.

What the claim of the petitioners really amounts to is that they are in the position of *bona fide* purchasers, and therefore are entitled to rights accordingly. But this claim overlooks a fundamental principle of equity, namely, that the original wrongdoer can never become a bona fide purchaser. This Court said in *Rogers* v. *Lindsey*, 13 How. 441, 446:

> A purchaser with notice may protect himself by obtaining the title of a purchaser for a valuable consideration without notice, unless he be the original party to the fraud. The *bona fide* purchase purges away the equity from the title in the hands of all persons who may obtain a derivative title, except it be that of the original party, whose conscience stands bound by the violation of the trust, and a meditated fraud. 1 Story, Eq. Jur., 397, 398, and cases.

To the same effect are *Clark* v. *McNeal*, 114 N. Y. 287; *McDaniel* v. *Sprick*, 297 Mo. 424, containing a very full discussion of the question; *Church* v. *Ruland*, 64 Pa. St. 432, 444, opinion by Justice

Sharswood; *Bourquin* v. *Bourquin*, 120 Ga. 115, opinion by Justice Lamar.

It is stated in *Bispham's Principles of Equity*, 10th Edition, Sec. 265, that the reason for this is "that it would be a gross outrage to allow the man who had originally perpetrated the wrong to reap the benefit of it." See also *The W. B. Cole*, 59 Fed. 182.

The contention of the petitioners overlooks a further principle; that is, that one claiming to be a *bona fide* purchaser has the burden of proof. *Wright-Blodgett Company* v. *United States*, 236 U. S. 397. The present case arises upon a motion to dismiss the bill, and the decision of the Circuit Court of Appeals, reversing that of the District Court, remanded the case with directions to permit these petitioners to answer. They may then set up their claim to be innocent purchasers.

When the petition for certiorari was filed the State of Utah filed a brief in support thereof, appearing as *amicus curiae*. In that brief it is alleged that the land involved contained 5,564.28 acres, and that in 1920 the Carbon County Land Company agreed to pay $100 an acre therefor, and executed its mortgage for $556,428 to secure the indebtedness. (Brief of Attorney General of Utah, p. 2.)

It is further stated that from the record it appears that the contracts annulled required the Milners to pay the State of Utah $1.50 per acre for the land and that from the mortgage it appears that the land company has agreed to pay the State $100

per acre. A copy of the mortgage is set forth as an appendix to the motion of the State of Utah for leave to appear as *amicus curiae*. It bears date the 2nd day of January, 1920. It is signed on behalf of the Carbon County Land Company by A. C. Milner, President. Whether this Milner is related to the Milners involved in the original fraud does not appear, but the similarity of names is significant.

The mortgage is for the entire purchase price, represented by three notes, all bearing date January 2, 1920, one for $100,000, payable on or before January 2, 1930; one for $200,000, payable on or before January 2, 1940; and one for $256,428, payable on or before the 2nd day of January, 1950, none bearing interest until January 2, 1925. It thus appears that no money at all was paid by the Carbon Land Company for the property, but notes were given for the entire amount extending over a period of thirty years. It also contains a provision that the State will release from the mortgage upon payment of $640,000, at any time, 640 acres of the land described. These facts of course are not shown by the record. They might be pleaded by way of answer. The bill admits a mortgage to the State (R. 5) and disclaims any intent to attack it in this case.

Inasmuch as the Attorney General of Utah has placed these facts before the Court, it seems proper to say that in our opinion they throw a strange light upon the good faith of all concerned. A pur-

chaser upon credit does not ordinarily acquire the rights of a *bona fide* purchaser. *Bispham*, Sec. 267. That he has not paid any part of the purchase price and is not to begin paying for ten years and has thirty years to complete does not add to his standing. The whole transaction is plainly a gamble dependent for its success upon the result of this suit.

The Attorney General of Utah also sets forth the deed from Carbon County Land Company to Independent Coal & Coke Company. From this it appears that the consideration was 500,000 shares of the grantee's stock, and an assumption of part of the mortgage.

The petitioners' case is unconscionable. They or their assignors, once adjudged guilty of fraud in inducing the certification so they could purchase from the State, now seek to avoid the effect of that decree and rob the United States of the fruits thereof and of this valuable mineral land on purely technical grounds. If that can be done upon this record, then at last fraud has found a way to circumvent equity. Why a State should have become a party to such a transaction and come here as a "friend of the Court" to help consummate it, is hard to understand.

V

THE STATUTE OF LIMITATIONS APPLICABLE TO PATENTS DOES NOT APPLY TO CERTIFICATIONS

The District Court granted the motion to dismiss upon the ground that the action was barred

by the limitation contained in Section 8 of the Act of March 3, 1891, c. 561, 26 Stat. 1095, 1099. The provision is—

> That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents.

We have already argued that this suit is not to vacate or annul a certification or a patent. Nevertheless it is at least gravely doubtful whether, in any event, this statute applies in the case of certifications as distinct from patents.

Fundamental to the interpretation of the statute lies the rule of law settled "as a great principle of public policy" that the "United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations, unless Congress has clearly manifested its intention that they should be so bound." *United States* v. *Whited & Wheless*, 246 U. S. 552, 561. In that case this Court went on to state that this principle "has been accepted by this court as requiring not a liberal, but a restrictive, a strict, construction of such statutes when it has been urged to apply them to bar the rights of the Government," referring to *Northern Pacific Railway Company* v. *United States*, 227 U. S. 355, 367, in which the limitation in the Act of March 2, 1896, c. 39, 29 Stat. 42, was

held not applicable to a patent erroneously issued for Indian lands under a railroad grant, and *La Roque* v. *United States*, 239 U. S. 62, 68, in which the general language of the Act of March 3, 1891, *supra*, was held not applicable to a trust patent for Indian reserved lands. Applying that principle it was held that the statute did not bar a suit for damages.

So also in *United States* v. *Minnesota*, 270 U. S. 181, this statute was held inapplicable where the United States sues to annul patents issued in alleged violation of rights of its Indian wards and of its obligations to them.

In *Exploration Company* v. *United States*, 247 U. S. 435, the statute was limited so that it did not begin to run until the discovery of fraud which had been concealed.

In *United States* v. *Kern River Company*, 264 Fed. 412, C. C. A. 9th Circuit, it was held that the statute did not apply to a suit by the Government to set aside for fraud and mistake the approval by the Secretary of the Interior of a canal company's maps of location filed as the basis of a right of way across public lands. The court, after pointing out the fact that the term patent when applied to a grant of public lands has a well-defined meaning, and quoting Section 458 of the Revised Statutes directing how patents should be signed and countersigned and recorded, said, page 416:

> It is a well-established rule that statutes of limitations do not run against the sov-

> ereign, in the absence of some express statutory provision to the contrary, and if the statute is made applicable to a class of suits only it will not be extended to other cases by implication. It was well known to Congress that grants of public lands are not always made by patent. Indeed, the grant of the right of way in question made by the same act is of that character. And had Congress intended that the bar of the statute should apply, not only to patents but to all legislative grants, it would have so provided in express terms.

See also *Lee Wilson & Co.* v. *United States*, 245 U. S. 24.

This Court has already intimated that the Act of 1891 affected patents only when it stated in *Louisiana* v. *Garfield*, 211 U. S. 70, at page 77:

> It may be that this Act applies to approvals when they are given the effect of patents as well as to patents, which alone are named. * * *
>
> * * * The United States fairly might argue that the statute of limitations was confined to patents, or was excluded by the Act of 1871.

That case involved a certification made under the Swamp Land Act of March 2, 1849, c. 87, 9 Stat. 352, which provided that on approval of a list of such lands by the Secretary of the Treasury the fee to the same should vest in the State.

Furthermore, the lands in question were not subject to acquisition by the State of Utah or by the

defendants under the Enabling Act of July 16, 1894, c. 138, 28 Stat. 107, 109. That was determined in the former case, to which the Carbon County Land Company was a party. *Milner* v. *United States*, 228 Fed. 431. The court said (p. 439):

> The applicants to purchase the land in question, the selecting agents of the state, and the land officers of the United States all acted on the theory that mineral lands or lands containing a deposit of coal did not pass under the grant. It is not claimed that such lands passed, in the briefs of counsel, and the pleadings practically admit the allegation of the bill that the lands granted were to be nonmineral. We are of the opinion, however, that no such contention could be sustained under the facts in this case. Section 2318, R. S. U. S. (Comp. St. 1913, § 4613), provides:
>
> "In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law."
>
> * * * In the present case, however, the lands are not specified in the statute, but so many thousand acres are granted to the proposed state, to be selected as stated in this opinion, and we conclude that the certification of these lands by the Secretary of the Interior did not carry mineral lands in direct opposition to section 2318, and the general policy of the United States.

While it is true that in *United States* v. *Winona & St. Peter Railroad Company*, 165 U. S. 463, this

Court referred to the word "patent" in this Act as including certification, the decision did not depend upon it, for the Court pointed out the fact that the suit was commenced before the expiration of the time prescribed, and said, referring to the limitations prescribed in that Act (p. 476):

> We only refer to them as showing the purpose of Congress to uphold titles arising under certification or patent by providing that after a certain time, etc.

In that case, however, it must be admitted that the Court held that the word "patent," in Section 1 of the Act of March 2, 1896, c. 39, 29 Stat. 42, 43, in the sentence, "But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed," included certifications, for the land involved had been certified. The latter statute, set forth in a footnote to that case, 165 U. S. 468, by the terms of its first section was restricted in its application to patents issued under a railroad or wagon road grant, and the subsequent sections of the Act referred repeatedly to "patented or certified" lands. The suit related solely to lands under railroad grants and the statute obviously was intended to apply to that particular situation.

The term patent, as pointed out in *United States v. Kern River Company, supra*, has a very specific meaning in the land laws, signifying an instrument of especial solemnity signed in the name of the President, countersigned by the recorder of the

General Land Office, and taking effect when there recorded in books especially provided for the purpose. *United States* v. *Schurz*, 102 U. S. 378, 403.

The other sections of the Act of March 3, 1891, do not indicate that the word patent is intended to be interchangeable with certification. As a whole the Act, besides making provisions for rights of way and forest and other reservations, is occupied in repealing, revising, and adding to such general land laws as the timber culture, town site, preemption and homestead laws, which lead to entries and patents. It refers to entries and patents repeatedly, but never to selections, or approvals, or certifications, or to those laws which involve them. It is fair to assume that in enacting Section 8 the attention of Congress was directed to the protection of the kind of titles to which the other portions of the statute so directly related. Such was the conclusion of Attorney General Gregory in an opinion to the Secretary of the Interior, 30 Ops. A. G. 372, 377, in which he said:

> This view is confirmed by section 7, which protects *bona fide* purchases and incumbrances made after final entry, and directs that patents shall issue to entrymen after the lapse of two years from the issuance of receiver's receipt, but confines both of these provisions to entries made under the homestead, timber culture, desert land, or preemption laws, or under the act itself.

The Attorney General in that opinion concluded that the solemnity of patents, the unusual formality

involved in their production, the fact that they wear the dignity and extend the assurance of the Government "in a degree not approached by any other form of Executive conveyance," may well have supplied sufficient reason to Congress for confining the limitation to them instead of extending it to less ceremonious certifications and approvals.

Certifications, on the other hand, are authorized by wholly dissimilar provisions of law. Passing title by certification was authorized by the Act of August 3, 1854, c. 201, 10 Stat. 346, reenacted without substantial change as Section 2449 of the Revised Statutes to cover cases where lands were granted by any law of Congress to one of the several States and Territories, and where the law did not convey the fee-simple title of the lands or require patents to be issued, the list of such lands should be certified by the Commissioner of the General Land Office and—

> shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.

Considering the marked distinction between patents and certifications and the fact that Congress,

in the Act of March 3, 1891, was dealing in the other sections of the Act exclusively with that portion of the public land laws in which patents, not certifications, were used in passing title, and bearing in mind further that statutes of limitations against the United States are construed strictly, it is not unreasonable to hold that the word patent in Section 8 of the Act was intended to apply only to patents and not to other forms of conveyance or grant. (30 Ops. A. G. 485.)

By statute and by decisions of this Court, the certification of these known mineral lands was void, beyond the authority of any officer. The disposition of mineral lands is governed by a special code of laws. *Charleston, S. C., Mining & Mfg. Co.* v. *United States* (February 21, 1927); *United States* v. *Sweet*, 245 U. S. 563; *Mullan* v. *United States*, 118 U. S. 271, 276. Under such circumstances the limitation contained in the Act of 1891 should not be deemed applicable.

VI

The judgment of the Circuit Court of Appeals should be affirmed.

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APRIL, 1927.